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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA)

Plaintiff,)

V.)

GERALD A. DELEMUS, et al.)

Defendant.)

Case No.: 2:16-cr-00046-GMN-PAL

DEFENDANT GERALD A. DELEMUS'S REPLY
TO GOVERNMENT'S RESPONSE
IN OPPOSITION TO MOTION TO REOPEN
DETENTION HEARING

Certification: This reply is timely filed.

COMES NOW, GERALD A. DELEMUS by and through his counsel BRIAN J. SMITH, ESQ. respectfully submits this Reply to Government's Response in Opposition to Motion to Reopen Detention Hearing. This Motion is made for the purposes of bringing new information to the record in support of the defendant's release from pretrial detention.

DATED this 11th day of July, 2016.

/s/ BRIAN J. SMITH

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I.
PROCEDURAL HISTORY

Mr. DeLemus was arrested in the District of New Hampshire on March 3, 2016, and made his initial appearance the same day.

On March 7, 2016, a detention hearing was held in the District of New Hampshire while New Hampshire counsel, namely, an attorney from the Federal Public Defender's Office in that jurisdiction, represented Mr. DeLemus. The Government, in their Response in Opposition, attached a copy of the transcript of that hearing to their filing. There is no need to rehash the findings and ruling made by United States Magistrate Judge Andrea K. Johnstone.

On April 4, 2016 Mr. DeLemus made an initial appearance before United States Magistrate Judge Carl W. Hoffman and was arraigned on the Superseding Indictment. **This was the first time that Mr. DeLemus was represented in a court proceeding by the undersigned.**

On April 7, 2016 Judge Hoffman continued Mr. DeLemus's detention based on the Order of Detention issued out of New Hampshire.¹

On April 26, 2016 the undersigned moved the District Court to review the Order of Judge Johnstone. On June 8, 2016, the Court denied the motion on procedural grounds.

¹ As the Government correctly points out, on March 9, 2016 Mr. DeLemus, through his New Hampshire counsel, moved to stay removal to Nevada in order to appeal the Detention Order to a District Court judge in New Hampshire. The following day, March 10, 2016, Mr. DeLemus moved for an extension of time to file an appeal of the Order. On March 16, 2016 that motion was denied. *Government's Response in Opposition to Defendant's Motion to Reopen Detention Hearing*, at p.3.

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II.
ARGUMENT

Title 18, United States Code, Section 3142 (f) provides for review of a detention hearing. The statute provides in relevant part that:

The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing in the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

In their Response, the Government argues that the information brought forth in the Motion to Reopen the Detention Hearing is neither *new* nor *material* within the meaning of the statute. The Government's position, in a nutshell, is that all of the information provided in the Motion to Reopen the Detention Hearing was known to Mr. DeLemus at the time of his hearing in New Hampshire, and for that reason this present motion should be denied.

To state the obvious, Mr. DeLemus is now moving this Court **through his Nevada counsel**. The undersigned wasn't present for the court proceedings in the District of New Hampshire, hadn't met Mr. DeLemus until April 4, 2016, and was completely unaware of the existence of the YouTube video that was referenced in the motion, unaware of the sheer number of petitions that had been signed and were yet to be signed, and unaware of the massive amount of discovery in this case.

There is no indication in the Government's Response in Opposition that Mr. DeLemus's New Hampshire counsel was aware of the existence of the YouTube video that was referenced in the undersigned's Motion to Reopen the Detention Hearing. Mr. DeLemus has been in continuous custody since March 3, 2016. It

1 isn't reasonable to expect a person in his situation to know which videos the
2 Government will use to argue their position that he is a danger to the community.
3 What is certain is that Mr. DeLemus's community is in New Hampshire, and what
4 was referred to in the motion in question as "a groundswell of support" was not
5 known either to Mr. DeLemus or the undersigned counsel. At least, not to the
6 extent that we now know.

7
8 As a matter of fairness, Mr. DeLemus deserves to have his detention status
9 revisited. His present counsel has not had an opportunity to address Judge
10 Johnstone's Order here in the District of Nevada. The information provided in the
11 Motion to Reopen Detention hearing was completely unknown to the undersigned
12 until well after Mr. DeLemus was transported to Las Vegas. Mr. DeLemus is in
13 custody, and as such he must rely on counsel to act as his "movant."

14
15 Wherefore, Defendant Gerald DeLemus respectfully requests that his
16 Motion to Reopen Detention Hearing be granted, and for such other relief as this
17 Court may deem just and appropriate under the circumstances.

18 DATED this 11th day of July 2016

19
20 /s/ BRIAN J. SMITH

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Law Office of BRIAN J. SMITH, LTD., and is a person of such age and discretion as to be competent to serve papers. That on July 11, 2016, she served an electronic copy of the above and foregoing **DEFENDANT GERALD A. DELEMUS'S REPLY TO GOVERNMENT'S RESPONSE IN OPPOSITION TO MOTION TO REOPEN DETENTION HEARING**, by electronic service (ECF) to the persons named below and via United States Postal Service, first class mail, to the defendant:

Daniel G. Bogden, Esq.
United States Attorney's Office
District of Nevada
Steven W. Myhre, Esq.
Nicholas D. Dickinson, Esq.
Assistant United States Attorneys
Nadia J. Ahmed, Esq.
Erin M. Creegan, Esq.
Special Assistant United States Attorneys

GERALD DELEMUS
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Nevada Southern Detention Center
2190 E. Mesquite
Pahrump, NV 89060

/s/ Bridget Figueroa
Employee of the
Law Office of BRIAN J. SMITH, LTD.